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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/611,960

07/03/2003

Gordon P. Kurtenbach

1500.1005CDC

3561

21171 7590 12/22/2010  
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EXAMINER

TRAN, MYLINH T

ART UNIT

PAPER NUMBER

2179

MAIL DATE

DELIVERY MODE

12/22/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/611,960	KURTENBACH, GORDON P.	
	<b>Examiner</b>	<b>Art Unit</b>	
	MYLINH TRAN	2179	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 June 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3,7 and 12-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,7 and 12-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

Applicant's request for reconsideration filed 06/01/2010 has been entered and carefully considered. Arguments regarding rejection under 35. U.S.C 102 to claims (1-3, 7 and 12-26). However, the limitations of the claims have not been found to be patentable over prior art of record and newly discovered prior art; therefore, claims 1-3, 7 and 12-26 are rejected under the new ground of rejection as set forth below.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 7 and 12-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buxton et al. [US. 6,094,197] in view of Smith [US. 5,721,853].

**As to claims 1, 7, 12, 15-16, 23 and 26**, Buxton et al. teach a computer implemented method and corresponding apparatus for a menu selection comprising the steps/means for a display displaying menu comprising a radial marking menu portion (figure 11, column 7, lines 35-52); a pointing device for indicating a type of selection by one of making a

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stroke having a direction and designating a location (column 3, lines 6-20); and a computer connected to a display and said pointing device (figure 20), and determining selection criteria for the type and a menu selection based on a method of selection from one of the stroke and the location (column 9, lines 48-55, column 10, lines 8-20). Buxton also teaches a display displaying a menu comprising a radial marking menu portion (figure 11); where selectable items in the radial marking menu sub-menu are included based on a priority (column 12, lines 16-60).

Buxton also teaches portion of radial marking menu (column 9, lines 32-48); a selection from the menu is made without displaying the menu with a single, uninterrupted stroke (figures 11, 13, column 10, lines 8-34, and column 10, lines 47-60).

While Buxton teaches a display displaying a menu comprising a radial marking menu portion at figure 11, Buxton et al. do not teach a linear menu portion. Particularly, Buxton et al. do not explicitly a display displaying a menu comprising a radial marking menu portion simultaneously displayed with a linear menu portion.

However, simultaneously displaying a radial marking menu portion and a linear menu portion are taught by Smith at figure 3A.

Accordingly, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have modified the radial marking and linear menus of Smith to include radial marking menu feature

to achieve the claimed invention. One would be motivated to make such a combination is to provide multiple selectable items for the users; thus, to promote a business.

**As to claim 2**, Buxton fails to clearly teach the menu including at least nine selectable menu items. Smith teaches the menu including at least nine selectable menu items (figure 3E). Accordingly, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have modified the radial marking and linear menus of Smith to include radial marking menu feature to achieve the claimed invention. One would be motivated to make such a combination is to provide multiple selectable items for the users; thus, to promote a business.

**As to claim 3**, Buxton et al. teach the menu including at least one menu item selectable based on the designating of only a location (column 9, lines 49-55).

**As to claims 13-14, 17**, Buxton teaches specifying selection criteria of a radial marking menu item when a method of selection is a stroke direction in the radial marking menu portion (column 3, lines 6-20). Buxton teaches the radial marking menu portion at figure 11; a selection from the menu is made without displaying the menu with a single, uninterrupted stroke (figures 11, 13, column 10, lines 8-34, and column 10, lines 47-60).

While Buxton teaches a display displaying a menu comprising a radial marking menu portion at figure 11, Buxton et al. do not teach a

linear menu portion. Particularly, Buxton et al. do not explicitly a display displaying a menu comprising a radial marking menu portion simultaneously displayed with a linear menu portion; neither specifying selection criteria of a linear location menu item when a method of selection uses an end point of the stroke when the stroke is in a linear location selection region.

However, simultaneously displaying a radial marking menu portion and a linear menu portion are taught by Smith at figure 3A. Smith also teaches specifying selection criteria of a linear location menu item when a method of selection uses an end point of the stroke when the stroke is in a linear location selection region at column 5, lines 4-40.

Accordingly, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have modified the radial marking and linear menus of Smith to include radial marking menu feature to achieve the claimed invention. One would be motivated to make such a combination is to provide multiple selectable items for the users; thus, to promote a business.

**As to claims 18-19,** Buxton shows making a stroke in a menu comprising a radial marking menu portion (column 9, lines 48-55), and selecting, based on the stroke, a second item of the menu, when the stroke is in a second radial portion of the menu and when the stroke does not terminate inside any displayed items of the menu (column 9, lines 48-

55 and column 10, lines 8-20); the radial marking menu portion represents a grouping of menu items based upon frequency of selection (column 12, lines 16-60).

While Buxton teaches a display displaying a menu comprising a radial marking menu portion at figure 11, Buxton et al. do not teach a linear menu portion. Particularly, Buxton et al. do not explicitly a display displaying a menu comprising a radial marking menu portion simultaneously displayed with a linear menu portion; neither selecting a displayed first item of the menu when the stroke terminates inside the displayed item in a displayed first linear portion of the menu.

However, simultaneously displaying a radial marking menu portion and a linear menu portion are taught by Smith at figure 3A. Smith also teaches selecting a displayed first item of the menu when the stroke terminates inside the displayed item in a displayed first linear portion of the menu (figure 3C, the first item of the menu (figure 3c, 304a) is selected when the mouse pointer terminates inside the portion 304b).

Accordingly, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have modified the radial marking and linear menus of Smith to include radial marking menu feature to achieve the claimed invention. One would be motivated to make such a combination is to provide multiple selectable items for the users; thus, to promote a business.

**As to claim 20**, Buxton teaches a radial portion in which a menu selection being based on a stroke (column 9, lines 40-60), Buxton also teaches portion of radial marking menu (column 9, lines 32-48); a selection from the menu is made without displaying the menu with a single, uninterrupted stroke (figures 11, 13, column 10, lines 8-34, and column 10, lines 47-60).

While Buxton teaches a display displaying a menu comprising a radial marking menu portion at figure 11, Buxton et al. do not teach a linear menu portion. Particularly, Buxton et al. do not explicitly a display displaying a menu comprising a radial marking menu portion simultaneously displayed with a linear menu portion; neither selection of a radial menu item of radial portion being suppressed when a pointer location is in the linear portion.

However, simultaneously displaying a radial marking menu portion and a linear menu portion are taught by Smith at figure 3A. Smith also teaches selection of a radial menu item of radial portion being suppressed when a pointer location is in the linear portion (column 5, lines 4-40). Accordingly, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have modified the radial marking and linear menus of Smith to include radial marking menu feature to achieve the claimed invention. One would be motivated to make such a



combination is to provide multiple selectable items for the users; thus, to promote a business.

**As to claims 21 and 22**, Buxton fails to clearly teach the radial menu item selection being reactivated when the pointer location exits a linear item in the linear portion; neither the radial menu item selection being reactivated when the pointer location crosses a radial portion boundary line extending across the menu. However, Smith the features at column 5, line 40 through column 6, line 6). Accordingly, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have modified the radial marking and linear menus of Smith to include radial marking menu feature to achieve the claimed invention. One would be motivated to make such a combination is to provide multiple selectable items for the users; thus, to promote a business.

**As to claim 24**, Buxton teaches the pointing device allowing a user to select by both making a stroke and designating a location and for indicating a type of selection by the user making one of a stroke having a direction for radial marking menu selection and designating a location (column 10, lines 8-34).

**As to claim 25**, Buxton teaches the pointing device for indicating a type of selection by one of making a stroke having a direction and designating a location local to both the display and the pointing device (column 5, lines 11-40).

### **Response to Arguments**

Applicant's arguments with respect to claims 1-3, 7 and 12-26 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mylinh Tran. The examiner can normally be reached on Mon - Thu from 7:00AM to 3:00PM at 571-272-4141.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo, can be reached at 571-272-4847.

The fax phone numbers for the organization where this application or proceeding is assigned are as follows:

571-273-8300

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Mylinh Tran

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/Weilun Lo/

Supervisory Patent Examiner, Art Unit 2179